IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 97 v. Canadian Iron, Steel and Industrial Workers' Union, Local 1,* 2023 BCSC 568

Date: 20230412
Docket: S149435
Registry: Vancouver

Between:

International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 97 and Doug Parton

Plaintiffs

And

Canadian Iron, Steel and Industrial Workers' Union, Local 1, Frank Nolan, Lower Mainland Steel (1998) Ltd., LMS Limited Partnership, 635971 BC Ltd., Rand Reinforcing Ltd., LMS Post-Tensioning Systems Ltd., Dale Paterson, Ken Davies, John Doe 1, John Doe 2, John Doe 3, and John Doe 4, Canadian Work Strategies Inc., Ken Baerg, Todd Cuminskey, Peter Pilarski, Danielle Synotte, John Voth, Tyler Buckmire, and William Smith a.k.a. Will Smith

Defendants

Before: The Honourable Justice Funt

Reasons for Judgment

Counsel for the Plaintiffs:	A. McConchie
Counsel for the Defendants:	R.W. Grant, K.C. J. Sebastiampillai
Place and Dates of Hearing:	Vancouver, B.C. June 24 and 30, 2022
Place and Date of Judgment:	Vancouver, B.C. April 12, 2023

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1. INTRODUCTION

[1] This action in defamation involves a union raid.

[2] The raiding union was the plaintiff, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 97 ("Local 97").

[3] The incumbent union was the defendant, Canadian Iron, Steel and Industrial Workers' Union, Local 1 ("CISIWU").

[4] The plaintiff, Mr. Doug Parton, is employed by Local 97 as a business agent.

[5] The plaintiffs have filed an amended notice of civil claim ("ANOCC") in which they plead they were defamed and seek damages and ancillary relief.

[6] The parties agree that the issue before the Court is whether the Court has jurisdiction over allegedly defamatory statements made during the course of and in the context of a raid by parties to the raid or persons associated with those parties which do not otherwise give rise to intimidation or coercion under the *Labour Relations Code*, R.S.B.C. 1996, c. 244 [*Code*].

[7] The parties agree as fact that none of the allegedly defamatory statements give rise to intimidation or coercion under the *Code*.

[8] The parties also agree as fact that all of the allegedly defamatory statements were made in the course of and in the context of a raid by parties to the raid or persons associated with the parties.

[9] For the reasons that follow, the Court finds that the Labour Relations Board (the "Board") has exclusive jurisdiction over the said allegedly defamatory statements. Accordingly, the defendants' application to strike the ANOCC and to dismiss the action is granted.

2. STRIKING PLEADINGS

[10] The applicable law to strike the ANOCC is not controversial. Rule 9-5 of the *Supreme Court Civil Rules* provides that a claim may "be struck out" where "it discloses no reasonable claim".

[11] If the Court does not have jurisdiction, the Court has no choice but to strike the claim.

[12] As described below, the Court finds that the Board has exclusive jurisdiction "over allegedly defamatory statements made during the course of and in the context of a raid by parties to the raid or persons associated with those parties which do not otherwise give rise to intimidation or coercion under the *Code*".

3. RELEVANT STATUTORY PROVISIONS

[13] The relevant statutory provisions are s.1, Definitions, "dispute", ss. 2, 6(1), 6(3)(d), 8, 9, 19, 133, 134, 135, 136, 137, 138, and 139 of the *Code*. I have included some of the sections because they serve to provide statutory context.

4. JURISPRUDENCE

[14] The leading authority is the decision of the Supreme Court of Canada in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929.

[15] In *Weber*, the Supreme Court of Canada settled the law that the exclusive jurisdiction model applies to final and binding arbitration under a statutory scheme. The relevant statutory provision was s. 45 of the *Labour Relations Act*, R.S.O. 1990, c. L.2, which read:

> 45. (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

[16] Although the case at bar does not involve an arbitration, it engages, as in *Weber*, statutory jurisdictional provisions.

[17] The Court in *Weber* in adopting the exclusive jurisdiction model disapproved of two alternative approaches: concurrent jurisdiction and overlapping jurisdiction.

[18] In *Weber*, Justice McLachlin (as she then was), writing for the majority, stated:

> [50] The final alternative is to accept that if the difference between the parties arises from the collective agreement, the claimant must proceed by arbitration and the courts have no power to entertain an action in respect of that dispute. There is no overlapping jurisdiction.
>
> [51] On this approach, the task of the judge or arbitrator determining the appropriate forum for the proceedings centres on whether the dispute or difference between the parties arises out of the collective agreement. Two elements must be considered: the dispute and the ambit of the collective agreement.
>
> [52] In considering the dispute, the decision-maker must attempt to define its "essential character", to use the phrase of La Forest J.A. in *Energy & Chemical Workers Union, Local 691 v. Irving Oil Ltd.* (1983), 148 D.L.R. (3d) 398 (N.B.C.A.). The fact that the parties are employer and employee may not be determinative. Similarly, the place of the conduct giving rise to the dispute may not be conclusive; matters arising from the collective agreement may occur off the workplace and conversely, not everything that happens on the workplace may arise from the collective agreement: *Energy & Chemical Workers Union*, *supra*, *per* La Forest J.A. Sometimes the time when the claim originated may be important, as in *Wainwright v. Vancouver Shipyards Co.* (1987), 38 D.L.R. (4th) 760 (B.C.C.A.), where it was held that the court had jurisdiction over contracts pre-dating the collective agreement. See also *Johnston v. Dresser Industries Canada Ltd.* (1990), 75 O.R. (2d) 609 (C.A.). In the majority of cases the nature of the dispute will be clear; either it had to do with the collective agreement or it did not. Some cases, however, may be less than obvious. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.
>
> [53] Because the nature of the dispute and the ambit of the collective agreement will vary from case to case, it is impossible to categorize the classes of case that will fall within the exclusive jurisdiction of the arbitrator. However, a review of decisions over the past few years reveals the following claims among those over which the courts have been found to lack jurisdiction: wrongful dismissal; bad faith on the part of the union; conspiracy and constructive dismissal; and damage to reputation (*Bartello v. Canada Post Corp.* (1987), 46 D.L.R. (4th) 129 (Ont. H.C.); *Bourne v. Otis Elevator Co.* (1984), 45 O.R. (2d) 321 (H.C.); *Butt v. United Steelworkers of America* (1993), 106 Nfld. & P.E.I.R. 181 (Nfld. T.D.); *Forster v. Canadian Airlines International Ltd.* (1993), 3 C.C.E.L. (2d) 272 (B.C.S.C.); *Bell Canada v. Foisy* (1989), 26 C.C.E.L. 234 (Que. C.A.); *Ne-Nsoko Ndungidi v. Centre Hospitalier Douglas*, [1993] R.J.Q. 536).

> [54] This approach does not preclude all actions in the courts between employer and employee. Only disputes which expressly or inferentially arise out of the collective agreement are foreclosed to the courts: *Elliott v. De Havilland Aircraft Co. of Canada Ltd.* (1989), 32 O.A.C. 250 (Div. Ct.), at p. 258, *per* Osler J.; *Butt v. United Steelworkers of America*, *supra*; *Bourne v. Otis Elevator Co.*, *supra*, at p. 326. Additionally, the courts possess residual jurisdiction based on their special powers, as discussed by Estey J. in *St. Anne Nackawic* [*Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219,* [1986] 1 S.C.R. 704].

[19] In *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14 [*Regina Police*], the Supreme Court of Canada made it clear that the disputed matter may arise explicitly or implicitly "from the interpretation, application, administration or violation of the collective agreement". For our purposes, this would apply with equal force to legislative provisions.

[20] The relevant paragraph from *Regina Police* reads:

> [25] To determine whether a dispute arises out of the collective agreement, we must therefore consider two elements: the nature of the dispute and the ambit of the collective agreement. In considering the nature of the dispute, the goal is to determine its essential character. This determination must proceed on the basis of the facts surrounding the dispute between the parties, and not on the basis of how the legal issues may be framed: see *Weber*, *supra*, at para. 43. Simply, the decision-maker must determine whether, having examined the factual context of the dispute, its essential character concerns a subject matter that is covered by the collective agreement. Upon determining the essential character of the dispute, the decision-maker must examine the provisions of the collective agreement to determine whether it contemplates such factual situations. It is clear that the collective agreement need not provide for the subject matter of the dispute explicitly. If the essential character of the dispute arises either explicitly, or implicitly, from the interpretation, application, administration or violation of the collective agreement, the dispute is within the sole jurisdiction of an arbitrator to decide: see, e.g., *Weber*, at para. 54; *New Brunswick v. O'Leary*, [[1995] 2 S.C.R. 967], at para. 6.

5. ANALYSIS

[21] The "essential character" of the dispute at bar concerns the statements made by one or more of the defendants in the course of and in the context of a union raid (representation campaign).

[22] On September 10, 2014, Local 97, CISIWU, and the employer entered into a "Settlement Agreement" with respect to the representation campaign. The Settlement Agreement reflects a protocol for the representation campaign and engages the Board. It arises from Local 97's certification application under s. 19 of the *Code*.

[23] The body of the Settlement Agreement reads:

> WHEREAS Local 97 has a pending certification application BEFORE THE Labour Relations Board (Case No. 67059/14R) seeking to represent employees of the Employer in their Infrastructure Division;
>
> AND WHEREAS both the Employer and CISIWU have advised the Board that the certification application is untimely and for an inappropriate bargaining unit;
>
> AND WHEREAS a hearing in the above-noted mailer is scheduled to commence on September 15, 2014;
>
> AND WHEREAS the Parties wish to dispose of the certification application without the need for a hearing;
>
> THE PARTIES HEREBY AGREE to the following:
>
> 1. The Employer is legally authorized to bind itself, Rand Reinforcing Ltd., and Lower Mainland Steel (1998) Ltd. (collectively, the "LMS Group') to the terms of this Settlement Agreement;
> 2. The Parties acknowledge that the period for changing union representation under section 19 of the *Code* for the LMS Group is November 1, 2014 to December 31, 2014 ("the Raid Period');
> 3. No later than October 31, 2014, the LMS Group shall provide a list of all employees of the LMS Group (as of October 30, 2014), along with mailing labels with the current mailing address of each employee to the Labour Relations Board (the "Board");
> 4. The Board, as soon as reasonably practical, shall have a Board employee perform a payroll inspection to confirm the accuracy of the list and addresses provided by the LMS Group;
> 5. Each Union will have an opportunity to send a mailout through the Board to the employees. To this end, each Union shall provide a copy of the material it wants sent out to the Board. The Board shall have said materials copied and mailed to all employees. All costs associated with these mailouts shall be borne by the LMS Group.
> 6. The Board will not provide either Union with any information relating to the names and addresses of employees or the number of employees;
> 7. Neither Union 'will include membership cards in their mailouts;
> 8. All communications between the LMS Group and its employees regarding any possible change in union representation shall be

> conducted in writing, and a copy of such communications shall be provided to counsel for Local 97 and counsel for CISIWU as soon as possible after being given to the employees, but in no case more than 24 hours after such communication is provided to the employees;
>
> 9. Local 97 will withdraw its application for certification in Case No. 67059/14R, and the Parties agree that in so doing, no time bar to an application under section 19 of the *Code* arises.

[24] All of the allegedly defamatory statements were made during the agreed raid period (November 1, 2014 to December 31, 2014).

[25] From the ANOCC, it is apparent that all of the allegedly defamatory statements were made in relation to the representation campaign. For example, paragraph 20 of the ANOCC reads:

> The December 2, 2014 Flyer
>
> 20. On or about Tuesday, December 2, 2014, the Defendants CISIWU, Nolan, LMS Group, Paterson, Davies, Doe 1, Doe 2, Doe 3, Doe 4, CWS, Baerg, Cumiskey, Pilarski, Synotte and Voth and each of them published the following words of and concerning the Plaintiffs in a writing they caused to be delivered to Jason Zimmer, Adam Forrest, and to numerous other individuals in the Province of British Columbia (the "December 2, 2014 Flyer"):
>
> LOCAL 97 = UNION THUGS!
>
> […]
>
> *We have heard reports that:*
>
> *1. Three Local 97 thugs showed up or an employees home at 6am. When he refused to sign their card they began placing union stickers on his car. Punches were thrown and the police were called.*
>
> *2. Local 97 thugs surrounded a Temporary Foreign Worker and told him that if he didn't sign their card, they would know and he would never work in Canada again.*
>
> *3. Local 97 thugs somehow got ahold of your phone number are calling and Texting employees and their spouses at home at all hours of the day. Clearly, they'll stop at nothing.*
>
> *4. LMS employees should NOT have to put up with this bullying! If you are one of the growing numbers of employees who have been bullied or threatened please call the BC Labour Board at 604-660-1300 or cisaiwu@gmail.com.*
>
> For those of you who have signed cards under pressure …

[26] As noted, the genesis of the Settlement Agreement was Local 97's application for certification under s. 19 of the *Code*. The Board was also engaged with confirming employee addresses with "mailouts" conducted through the Board.

[27] With respect to defamation, it is clear that in *Weber*, McLachlin J. contemplated that "damage to reputation" would fall within the exclusive jurisdiction of the arbitrator: *Weber* at para. 53.

[28] In a similar vein, in *Giorno et al. v. Pappas* et al. (1999), 42 O.R. (3d) 626 (Ont. C.A.), the Ontario Court of Appeal held that the plaintiff's claim for defamation must be dismissed because the dispute arose under a collective agreement. All of the disputed facts were workplace related.

[29] In writing for the majority in *Giorno*, Goudge J.A., at 631, stated:

> The collective agreement places a broad obligation on the employer to provide a safe and healthy workplace. This obligation was seen by Ms. Giorno to be broad enough to support the relief requested in her grievance. It was seen by the parties as sufficient to sustain the relief agreed on in the settlement. Indeed, I see no reason why it could not have sustained a claim for damages at arbitration, the very relief claimed in the litigation.
>
> In short, I conclude that the essential character of the conduct complained of by the appellants is covered by the collective agreement. The dispute is therefore one that arises under the collective agreement and had to be resolved in the arbitration process. It cannot be resolved in the courts.

[30] The *Code* specifically demarcates the exclusive jurisdiction of the Board and the jurisdiction of a court.

[31] Section 136 of the *Code* reads:

> Jurisdiction of board
>
> 136 (1) Except as provided in this Code, the board has and must exercise exclusive jurisdiction to hear and determine an application or complaint under this Code and to make an order permitted to be made.
>
> (2) Without limiting subsection (1), the board has and must exercise exclusive jurisdiction in respect of
>
> (a) a matter in respect of which the board has jurisdiction under this Code, and

> (b) an application for the regulation, restraint or prohibition of a person or group of persons from
>
> (i) ceasing or refusing to perform work or to remain in a relationship of employment,
>
> (ii) picketing, striking or locking out, or
>
> (iii) communicating information or opinion in a labour dispute by speech, writing or other means.
>
> [Emphasis added.]

[32] Section 137(1) of the *Code* reads:

> Jurisdiction of court
>
> 137 (1) Except as provided in this section, a court does not have and must not exercise any jurisdiction in respect of a matter that is, or may be, the subject of a complaint under section 133 or a matter referred to in section 136, and, without limitation, a court must not make an order enjoining or prohibiting an act or thing in respect of them.
>
> [Emphasis added.]

[33] The exception recognizing a court's jurisdiction is found in s. 137(2), which reads:

> (2) This Code must not be construed to restrict or limit the jurisdiction of a court, or to deprive a court of jurisdiction to entertain a proceeding and make an order the court may make in the proper exercise of its jurisdiction if a wrongful act or omission in respect of which a proceeding is commenced causes immediate danger of serious injury to an individual or causes actual obstruction or physical damage to property

[34] Section 133(1) of the *Code* reads:

> Hearing of complaint
>
> 133 (1) If, on application or complaint by any interested person, under section 14, this section or another provision of this Code or regulations, or on its own motion, the board is satisfied that any person has contravened this Code, a collective agreement or the regulations, it may, in its discretion, do one or more of the following:
>
> (a) order a person to do any thing for the purpose of complying with this Code, a collective agreement or the regulations, or to refrain from doing any act, thing or omission in contravention of this Code, a collective agreement or the regulations;
>
> (b) order a person to rectify a contravention of this Code or the regulations;

> (c) refuse to make an order, despite a contravention of this Code, a collective agreement or the regulations, if the board believes it is just and equitable to do so in view of the improper conduct of the person making the application or complaint;
>
> (d) except in relation to conduct regulated by Part 5, make an order setting the monetary value of an injury or loss suffered by a person as a result of a contravention of this Code, a collective agreement or the regulations, and directing a person to pay to the person suffering the injury or loss the amount of that monetary value;
>
> (e) order an employer to reinstate an employee discharged in contravention of this Code, a collective agreement or the regulations;
>
> (f) make another order or proceed in another manner under this Code, consistent with section 2, that the board considers appropriate.
>
> [Emphasis added.]

[35] Part 5 of the *Code*, which addresses strikes, lockouts, and picketing, is consistent with the s. 137(2) exception. In the case at bar, the s. 137(2) exception is not engaged.

[36] Under s. 137(4), a court may award "damages for injury or losses as a consequence of conduct contravening Part 5". In all other matters, the Board may award damages.

[37] The demarcation of jurisdiction avoids duplicative proceedings and recognizes the more modern approach that labour relations regulation provides a code governing all aspects of labour relations: *Weber* at para. 41.

[38] In my view, the reasons of Nemetz, C.J.B.C. in *Better Value Furniture (CHWK) Ltd. v. General Truck Drivers and Helpers Union, Loc. 31* (1981), 26 B.C.L.R. 273, 1981 CanLII 397 (C.A.) [*Better Value*], which preceded *Weber*, must be read having regard to *Weber*. For this reason, I do not consider myself bound by *Better Value*.

[39] Sections 136 and 137 of the *Code* address the Board's jurisdiction and a court's jurisdiction respectively. In comparing ss. 136 and 137, I note the emphatic

wording the Legislature has chosen. The Board "has and must exercise exclusive jurisdiction": s. 136. Under s. 137, "a court does not have and must not exercise any jurisdiction in respect of a matter that is, or may be, the subject of a matter referred to in section 136". The Legislature could have chosen more relaxed wording, for example, by simply saying that the Board has exclusive jurisdiction and that the court does not have jurisdiction.

[40] Returning to the allegedly defamatory statements made by one or more of the defendants in the course of and in the context of a union raid, I note that in ss. 136 and 137, the Legislature uses the phrase "in respect of".

[41] In *R. v. Nowegijick*, [1983] 1 S.C.R. 29, Justice Dickson (as he then was), writing for the Supreme Court of Canada stated (at 39):

> The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

[42] In my view, the allegedly defamatory statements fall within s. 136(2)(a) of the *Code*. Under s. 19, the Board has jurisdiction under the *Code* to deal with a change in union representation. A union raid is a matter in respect of a change in union representation. Allegedly defamatory statements may arise in respect of a union raid. As such, the Board has and must exercise exclusive jurisdiction.

[43] If the Legislature had intended a narrower approach, s. 136(2)(a) would have read:

> a) a matter for which the board has jurisdiction under the *Code*.

[44] The Legislature's double use of "in respect of" in s. 136(2)(a) serves to instruct a broad interpretation.

[45] In looking at a court's jurisdiction (subject to an exception that does not apply in the case at bar), a "court does not have and must not exercise any jurisdiction <u>in respect of</u> […] a matter referred to in section 136 […]" [Emphasis added.]: s. 137(1).

A defamatory statement would also not constitute a wrongful act that "causes immediate danger or serious injury to an individual" which would bring the matter within a court's jurisdiction: s. 137(2).

[46] As may be seen from s. 136(2)(b), the Board has the power to regulate matters in the exercise of its jurisdiction.

[47] I also note that under s. 43(1) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, an administrative tribunal, such as the Board, "has jurisdiction to determine all questions of fact, law or discretion that arise in any matter before it, […]".

[48] Again, the essential character of the dispute concerns the allegedly defamatory statements arising in the course and in the context of a union raid. Absent an explicit reference in the *Code* to defamation, I find that a contextual interpretation of the *Code* and the administrative role of the Board over labour relations further supports my conclusion that the allegedly defamatory statements are within the Board's exclusive jurisdiction.

[49] In the case at bar, the Settlement Agreement arose from a s. 19 application, the raid period fell within the prescribed period under the *Code*, the Board's services were engaged with respect to the mail-outs, and the result of the vote helped to resolve the determination as to which union would represent the employees. Statements and other communications are part of any representation campaign.

[50] The plaintiffs submit that "in the absence of coercive, intimidating or threatening content" in statements made during a raid campaign, the Board does not have jurisdiction. In this regard, I understand that the plaintiffs are referring to s. 9 of the *Code*, which reads:

> A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union.

[51] Section 9 clearly prohibits coercion or intimidation of any kind in connection with a representation campaign.

[52] Section 8 confirms the right of free expression. Section 8 reads:

> Subject to the regulations, a person has the freedom to express his or her views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, provided that the person does not use intimidation or coercion.

[53] Part of the right of free expression is that one can make defamatory statements. Unlike coercion or intimidation, the truth of the defamatory statement is a defence to claim of defamation. In my view, this is the legislative purpose in not including defamation in either ss. 8 or 9 as it did with respect to intimidation and coercion.

[54] I do not find that ss. 8 and 9 support the plaintiffs' submission that the court has jurisdiction over allegedly defamatory statements made during the course of and in the context of a union raid.

[55] One of the purposes of s. 8 is to restrict the scope of other provisions of the *Code* so as to prevent restricting a person's "freedom to express his or her view on any matter". It would overshoot the legislative intent to then conclude that the freedom to express one's views includes lies and falsehoods. Few matters are more corrosive to good relations, including labour relations, than lies and falsehoods.

[56] In my view, having regard to the text, context, and purpose of the *Code*, it would be surprising if the Board did not have jurisdiction over lies and falsehoods arising in the course of and in the context of a representation campaign. "In determining the meaning of the text, a court cannot read a statutory provision in isolation, but must read the provision in light of the broader statutory scheme": *R. v. McColman*, 2023 SCC 8 at para. 35.

[57] In interpreting s. 8 of the *Code*, in my view, the Legislature did not intend to encourage falsehoods or lies by using the language "a person has the freedom to express his or her view on any matter". In other words, where a person makes a

defamatory statement in the course of and in the context of a labour relations matter for which there is not a defence (such as the truth of the statement), the person has contravened the *Code*, having particular regard to s. 8 of the *Code*. The essential character of the dispute at bar arises implicitly from the interpretation and ambit of the *Code*: *Regina Police*, para. 25.

[58] The Legislature has made it clear that it wishes to "[promote] conditions favourable to the orderly, constructive, and expeditious settlement of disputes": *Code*, s. 2(e).

[59] While I acknowledge that "dispute" is defined in s. 1 as in connection with disputes involving employment , the legislative intent should not be so restricted. The "orderly, constructive, and expeditious settlement" of a potential change in union representation would accord with the overall purpose of the *Code* to facilitate civil and harmonious dealings in labour relations matters.

[60] Recognizing the often real-time nature of labour relations, including representation campaigns, where the *Code* has been contravened, the Legislature, under s. 133(1), has given the Board the discretion to do any of the following (among other orders):

> a) order a person to do any thing for the purpose of complying with the *Code* […] or to refrain from doing any act, thing, […], in contravention of [the] *Code*.
>
> b) order a person to rectify a contravention of [the] *Code* […].
>
> […]
>
> d) […] make an order setting the monetary value of an inquiry or loss suffered by a person as a result of the contravention of [the] *Code* […]
>
> […]

> f) make another order or proceed in another manner under [the] Code, consistent with section 2, that the Board considers appropriate.

[61] Section 136(2)(b)(iii) provides:

> (2) Without limiting subsection (1), the board has and must exercise exclusive jurisdiction in respect of
>
> […]
>
> (b) an application for the regulation, restraint or prohibition of a person or group of persons from
>
> […]
>
> (iii) communicating information or opinion in a labour dispute by speech, writing or other means.

[62] While a representation campaign is not a labour "dispute" (as defined in s. 1), s. 136(2)(b)(iii) specifically provides that it is not to be read as limiting the Board's exclusive jurisdiction. In other words, the Board, in considering a representation campaign, may regulate, restrain, or prohibit a person or group of persons from communicating information or opinion in a representation campaign by speech, writing, or other means: *Code*, ss. 133(1)(f) and 136(1).

[63] In my view, the foregoing interpretation recognizes the exclusive jurisdiction model and addresses "the concern that the dispute resolution process which the various labour statutes in this country have established should not be duplicated and undermined by concurrent actions": *Weber*, para. 58.

[64] The Board has considerable latitude in the exercise of its jurisdiction. With respect to a lie or a falsehood in the course of a representation campaign, it could order a retraction, order a forum for response by the defamed party, or order monetary damages, among other relief.

[65] Further, the allegedly defamatory statements made during the course of and in the context of the union raid "may be" the subject of a "complaint under section 133 or a matter referred to in section 136" and, accordingly, are not within a court's jurisdiction: s. 137. As noted above, the Board "has and must exercise exclusive jurisdiction to hear and determine an application or complaint under" the *Code*:

s. 136. The Legislature's use of "may be" in s. 137(1) must be given meaning. It serves to exclude a court's jurisdiction.

[66] In those cases, where the Board in its discretion concludes that a monetary award would not be appropriate, it does not follow that a court would have jurisdiction to make a monetary award. The Board, in the exercise of its exclusive jurisdiction, would have simply concluded that a monetary award is not appropriate in the context of the matter before it and of the other relief possibly ordered.

[67] Finally, if the Legislature had intended that defamation matters were to be under a court's jurisdiction, the Legislature could have addressed damages for defamation as it did "for injury or losses suffered as a consequence of conduct contravening Part 5" (strikes, lockouts, picketing); *Code*, s. 137(4).

[68] *In fine*, the demarcation is clear. The Board has and must exercise exclusive jurisdiction over allegedly defamatory statements made in the course of and in the context of a union raid and a court does not have and must not exercise any jurisdiction.

6. CONCLUSION

[69] The amended notice of civil claim is struck and the action is dismissed.

7. COSTS

[70] If the parties wish to address costs, I ask that they, within 30 days of these reasons, arrange through Supreme Court Scheduling a 9 a.m. 55-minute hearing before me.

"Funt J."